

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL ANTHONY WADE, JR.,

Petitioner,

v.

JERI BOE,

Respondent.

Case No. 2:20-cv-00097-RAJ

ORDER GRANTING EXTENSION
OF TIME

This matter comes before the Court on Petitioner Michael Wade Jr.'s Motion for Extension of Time to File a Notice of Appeal. Dkt. # 17.

On June 21, 2021, this Court adopted the Report and Recommendation of Mary Alice Theiler, United States Magistrate Judge. Dkt. # 15. Adopting that report, the Court denied Mr. Wade's petition for writ of habeas corpus, dismissed his action with prejudice, and denied him a certificate of appealability. *Id.* That same day, the Court entered its judgment. Dkt. # 16.

Under Federal Rule of Appellate Procedure 4(a), Mr. Wade was required to file a notice of appeal, if any, within 30 days of that judgment, or July 21, 2021. The day before his time to file a notice of appeal was set to expire, Mr. Wade filed the instant motion, seeking to extend his time to appeal by 60 days. Dkt. # 17. Respondent does not

1 oppose the motion in principle; Respondent only requests that the Court extend Mr.
2 Wade's time to file a notice of appeal by 30, not 60, days. Dkt. #18.

3 A party may move for an extension of time to file an appeal under Federal Rule of
4 Appellate Procedure 4(a)(5). A district court may grant an extension if two conditions
5 are met: (1) "a party so moves no later than 30 days after the time prescribed by this Rule
6 4(a) expires" and (2) that party shows "excusable neglect" or "good cause." Fed. R. App.
7 P. 4(a)(5). If a court grants an extension under this rule, no extension may exceed "30
8 days after the prescribed time or 14 days after the date when the order granting the
9 motion is entered, whichever is later." *Id.*

10 Here, both conditions are met. The first is met because Mr. Wade filed his motion
11 for extension of time on July 20, 2021, before his 30 days to file a notice of appeal
12 expired. Dkt. # 17. The second is met because Mr. Wade has shown good cause: the
13 COVID-19 pandemic has "severely restricted" his access to the law library in his prison,
14 Respondent does not oppose the motion and thus suffers no prejudice, and Mr. Wade
15 appears to have been diligent in bringing this motion. Dkt. # 17 at 2; Dkt. # 18.

16 Though the Court grants the motion, it does not grant a 60-day extension as Mr.
17 Wade requests. Under Federal Rule of Appellate Procedure 4(a)(5)(C), the Court may
18 only grant a 14-day extension.

19 Thus, the Court **GRANTS in part** Mr. Wade's Motion for Extension of Time to
20 File a Notice of Appeal. Dkt. # 17. Mr. Wade may file a notice of appeal **within 14 days**
21 **of the entry of this Order.**

22 DATED this 22nd day of October, 2021.

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25 The Honorable Richard A. Jones
26 United States District Judge
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